

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE J. EZRA MERKIN AND BDO  
SEIDMAN SECURITIES LITIGATION

08 Civ. 10922 (DAB)

**STIPULATION OF VOLUNTARY DISMISSAL PURSUANT TO F.R.C.P 41(a)(1)(A)(ii)**

IT IS HEREBY STIPULATED AND AGREED by and between the parties and their respective counsel that the above-captioned action is voluntarily dismissed, with prejudice, against defendants J. Ezra Merkin and Gabriel Capital Corporation pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). Because the Honorable Deborah A. Batts previously dismissed the lawsuit with prejudice, and the proposed class in the lawsuit has not been certified, the procedures of Rule 23(e) are not applicable.

Plaintiffs' motion pursuant to Rule 59 of the Federal Rules of Civil Procedure to alter or amend the judgment dismissing the lawsuit and for leave to file a Fifth Amended Complaint shall remain pending with respect to defendant BDO Seidman only.

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